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COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Investigation by the Department on its Own Motion as to the Propriety of the Rates and Charges Set Forth in the Following Tariffs: M.D.T.E. Nos. 14 and 17, filed with the Department on December 11, 1998, to become effective January 10, 1999, by New England Telephone and Telegraph Company d/b/a Bell Atlantic Massachusetts

DTE 98-57

JOINT MOTION OF AT&T COMMUNICATIONS OF NEW ENGLAND, INC. AND MCI WORLDCOM, INC. TO CONTINUE HEARINGS UNTIL AFTER

BELL ATLANTIC FILES ITS REVISED EEL TARIFF

Introduction.

AT&T Communications of New England, Inc. ("AT&T") and MCI World Com, Inc. ("MCIW") hereby jointly move the Department of Telecommunications and Energy ("DTE" or "Department") to require Bell Atlantic-Massachusetts ("BA-MA") to file promptly intended revisions to its proposed D.T.E. Tariff No. 17, and to continue the hearings in this matter to the week of January 24, 2000 and the effective date of the tariff within the statutorily permissible suspension period to March 27, 2000, in order to permit the parties to address the revisions to BA-MA's Enhanced Extended Loop ("EEL") tariff offering. A continuance of these proceedings is necessary to permit competitive local exchange providers ("CLECs") such as AT&T and MCIW a fair opportunity to review BA-MA's EEL offering, which BA-MA has indicated it intends revise to comply with the recent UNE Remand Order(1) and Supplemental Order of the Federal Communications Commission ("FCC"). BA-MA's EEL tariff has greatly increased significance in light of the provision of the UNE Remand Order relieving incumbent LECs ("ILECs") such as BA-MA from the requirement to offer local switching in densely populated areas, where the ILEC provides non-discriminatory, cost-based access to EEL. Prior to the UNE Remand Order, BA-MA insisted that its EEL offering was made on a voluntary basis. The UNE Remand Order now makes an EEL offering satisfying non-discrimination and cost requirements of the Telecommunications Act of 1996 a requirement if BA-MA wishes to avoid its obligation to provide switching in the most densely populated areas. Increased scrutiny by the Department of BA-MA's EEL offering to ensure it meets federal requirements is therefore warranted, especially since EEL will be the only means, via UNEs, to reach customers with four or more lines in densely populated areas. In order properly to address the revisions to BA-MA's tariff, the Department should, at the very least, order the withdrawal of BA-MA's current EEL offering and prompt filing of revised EEL provisions from Tariff No. 17. Any proceedings on BA-MA's revised EEL tariff should proceed on an expedited schedule, as AT&T and MCIW are interested in an expedited process in order to have an EEL offering satisfying federal requirements in place.

Argument.

BA-MA's currently proposed version of Tariff No. 17, issued August 27, 1999, contains provisions making an EEL offering available to CLECs. See Proposed D.T.E. Tariff No. 17, Part B, Section 13. On November 5, 1999, the FCC issued its UNE

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Remand Order, which set forth certain requirements for ILECs concerning EEL. On November 24, 1997, the FCC issued its Supplemental Order, which also addressed the terms and conditions under which ILECs must make EEL available, pending further rulemaking by the FCC.

On December 1, 1999, BA-MA filed its Comments on Unbundled Network Element Provisioning ("BA-MA's December 1 Comments") in the Consolidated Arbitrations. In its December 1 Comments, BA-MA acknowledges that it must modify its currently proposed EEL offering in Tariff No. 17 in order to comply with the FCC's UNE Remand Order and Supplemental Order as they pertain to EELs. See BA-MA's December 1 Comments at 18-19.

BA-MA specifically identifies three modifications that it intends to make to Tariff No. 17's EEL provisions to comply with FCC requirements. First, BA-MA's existing EEL offering is limited to 2-wire analog and digital ISDN-capable loops. As BA-MA acknowledges, the FCC does not allow such a limitation. In its UNE Remand Order, the FCC determined that ILECs need not offer access to unbundled local circuit switching to CLECs who serve customers with four or more lines in density zone 1 in the top 50 metropolitan statistical areas ("MSAs"), so long as the ILEC has provided nondiscriminatory, cost-based access to the enhanced extended link throughout density zone 1. (2) BA-MA concedes that it must alter its tariff in order to permit CLECs to obtain EEL over all types of loops used to provide local service.

BA-MA's required expansion of its EEL offering, and its connection to BA-MA's obligation (or lack thereof) to provide local switching in certain areas, is alone reason enough to continue these proceedings pending BA-MA's revisions to Tariff No. 17. Since BA-MA will be relieved of its obligation to offer local circuit switching in density zone 1 in the Boston MSA where it offers non-discriminatory and cost-based access to EEL, it is important that CLECs and the Department have a meaningful opportunity to review the rates, terms and conditions for EEL that BA-MA intends to propose for EEL. Indeed, BA-MA insisted prior to the issuance of the UNE Remand Order that its proposed EEL offering was entirely voluntary, and therefore not subject to the same requirements as other offerings subject to the Telecommunications Act or FCC rules. Because BA-MA's EEL offering clearly must now satisfy the non-discrimination and cost requirements of the Act where BA-MA declines to provide local switching for customers with four or more lines in the most densely populated areas, the Department must give increased scrutiny to BA-MA's EEL offering, to ensure it satisfies federal requirements. Indeed, if BA-MA decides to restrict its local switching offerings in the manner permitted under the UNE Remand Order, EEL represents the only way, via UNEs, that CLECs will be able to reach customers with four or more lines. It is therefore vital that BA-MA's EEL offering be made on rates, terms and conditions that are just, reasonable and non-discriminatory.

There are, moreover, two additional respects in which BA-MA acknowledges it must revise the tariff. Under BA-MA's current proposal, CLECs may only order EEL where it will use the service to provide predominantly switched local exchange service. In its Supplemental Order, however, the FCC stated that, pending completion of the FCC's proposed rulemaking, interexchange carriers ("IXCs") may not convert special access services to combinations of unbundled loops and transport network elements unless the IXC uses such combinations of loop and transport elements to provide a significant amount of local exchange service to a particular customer, or to provide advanced DSL service to the CLEC's customer. Supplemental Order at ¶¶ 4-5. In addition, BA-MA's existing offering requires the CLEC to terminate the dedicated transport element of the EEL at a CLEC collocation node. The FCC UNE Remand Order, by contrast, requires that ILECs permit the transport component to terminate at an ILEC switch. BA-MA has indicated in its December 1 Comments (at 19) that it will revise its EEL offering accordingly, but it has not yet filed revised provisions, so neither CLECs nor the Department have yet had the opportunity to examine the proposed changes and confirm that BA-MA's offering comports with the FCC requirements.

The Department has scheduled hearings for next week, December 13-17, 1999, to

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address BA-MA's proposed interconnection tariff, D.T.E. No. 17, including the provisions concerning BA-MA's currently proposed EEL offering. It simply makes no sense for the Department to conduct hearings on the currently proposed tariff that on its face does not comply with applicable requirements. Nor would it make sense to have hearings on any revisions that BA-MA may submit between today and the hearings next week. Any time spent on EEL or on issues that will be affected by a revised EEL offering would constitute wasted resources by the Department and the parties, since further proceedings on BA-MA's revised EEL filing will be required in any event. Especially given the increased importance of EEL as the CLECs' alternative under the UNE Remand Order to local switching in densely populated areas of Boston and its environs, both CLECs and the Department are entitled to a meaningful opportunity to review BA-MA's revised EEL offering and to appropriate procedures for examining the offering, including, potentially, discovery and testimony regarding the offering. At the same time, it is in the interests of all concerned - CLECs, BA-MA, and the Department - as well as the interest of competition in Massachusetts, to have EEL available in compliance with FCC requirements as soon as possible, after meaningful review.

In order to address the fundamental problems presented by conducting proceedings on a tariff BA-MA concedes will be revised, the Department should require BA-MA to file promptly - not later than December 17, 1999 - its revised tariff provisions concerning EEL, and should continue the hearings scheduled for next week to the week of January 24, 2000. Any necessary procedural steps concerning the EEL tariff filing (discovery, CLEC testimony) could be completed within the intervening weeks. In addition, in order to accommodate the continuance in the schedule, the Department should extend the existing suspension period for the tariff to March 27, 2000, six months from the effective date proposed by BA-MA when it filed the current version of Tariff No. 17. The briefing period should of course be extended accordingly. At the very least, however, the Department should order BA-MA to withdraw the current version of EEL from Tariff No. 17, and should remove that issue (and any affected matter) from consideration during next week's hearings. In that case, the Department should at the same time order BA-MA to file promptly its revised EEL offering, and schedule expedited proceedings for addressing the revised offering, so that CLECs may obtain non-discriminatory, cost-based access to EEL as soon as possible.

Conclusion.

For the foregoing reasons, AT&T and MCIW respectfully request that the Department (1) require Bell Atlantic-Massachusetts ("BA-MA") to file promptly intended revisions to its proposed D.T.E. Tariff No. 17, (2) continue the hearings in this matter to the week of January 24, 2000 and (3) extend the effective date of the tariff within the existing suspension period to March 27, 2000. In the alternative, AT&T and MCIW request that the Department order the withdrawal of BA-MA's current EEL offering and a prompt filing of tariff provisions implementing EEL in compliance with federal requirements, and expedited proceedings for addressing BA-MA's revised EEL tariff.

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Dated: December 8, 1999.

1. 1 Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, FCC 99-238 (rel. Nov. 5, 1999).

2. 2 UNE Remand Order ¶ 278.